

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 4787 OF 1989

DISTRICT: SANGLI

Vilasrao Sarjerao Patil,	]	
C/o. S.B. Patil, Samadhan, Plot No.20A,	]	
Shalininagar, Sangli – 416 416.	]	.. Petitioner

Versus

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|--|---|----------------|
| 1. Asarondi Panchkroshi Shikshan Prasarak, |] | |
| Mandal, C/o. Madhyamik Vidyamandir, |] | |
| Asrondi, Via: Kankavali, Tal. Malvan, |] | |
| District : Sindhudurg – 416 602. |] | |
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| 2. Madhyamik Vidyamandir, |] | |
| Asrondi, via: Kankavali, Tal: Malvan, |] | |
| District : Sindhudurg. |] | |
| | | |
| 3. State of Maharashtra. |] | .. Respondents |

Mr. Santosh Shetty i/b Mr. M.M. Vashi for the petitioner.

Mr. D.B. Sawant for the respondent Nos.1 and 2.

CORAM: ANOOP V. MOHTA, J.

DATED: 23RD AUGUST, 2004.

ORAL JUDGMENT :

1. The present Petition is under Article 226 and 227 of the Constitution of India, filed by the petitioner (Assistant teacher) and thereby, has challenged the order and judgment dated 27th October, 1989, passed by the Presiding Officer, School Tribunal, Mumbai [for short “Tribunal”], in Appeal No. GEN/71/SND/3 of 1988, whereby, the Tribunal, had allowed the Appeal but only granted the benefit under Section 11(2)(e) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short “MEPS Act”) and directed to pay six months' salary by way of compensation instead of reinstatement, although the termination order dated 30th March, 1988, of the petitioner was set aside. The Petitioner, being aggrieved, therefore, has basically prayed for reinstatement as permanent Assistant Teacher and all other benefits.

2. Heard the learned counsel appearing for the parties. The basic issue which needs to be answered in this Petition is the right of the petitioner, being an open category candidate, to have a status of permanency as Assistant Teacher on a

reserved post.

3. The provisions of the MEPS Act and the Rules made thereunder govern the recruitment and conditions of service of employees in private Schools. The relevant Sections are Sections 4, 5 and 9. The relevant Rules are called the Maharashtra Employees of Private School Rules [for short 'MEPS Rules']. The relevant Rules, which covers the case in hand, are Rule 9 and 28.

4. The petitioner was appointed temporarily in the post of Assistant Teacher for the period 1984-1985 and 1985-1986. Thereafter, he was appointed on probation for a period of two years under Section 9(5) of the MEPS Act. The said appointment order itself contained a clause that his appointment would be subject to the approval of the Education Department of District Sindhudurg. The respondent-Management, however, by an order dated 30th March, 1988, terminated the services of the petitioner. The petitioner, therefore, preferred an Appeal under Section 9 of the MPES Act and Rules. The School Tribunal, after considering the contentions raised, including the written submissions filed by respondents, passed the impugned order and held that the impugned termination notice dated 30th March, 1988, was illegal, invalid and improper. Accordingly, the Appeal was allowed. However, not granted reinstatement with back wages, after recording the statement that 'a suitable substitute from S.T. category is posted'. The respondents

were directed to give him six months salary only.

5. It appears from the record, as well as, the Written Statement filed by the Management that the post in question was reserved for SC/ST candidate. As per the advertisement, the petitioner was appointed for the respective years, subject to the approval from the Education Department, Zilla Parishad, Sindhudurg. The said appointment was purely temporary. As there was no candidate available, belonging to the said reserved category, petitioner was appointed temporarily, on the said post. The said process was continued for two years more. The respondent's case is that as the candidate belonging to the reserved category were not available or did not respond to the advertisement and, therefore, were left with no choice, but to appoint the petitioner on a temporary basis. The foundation of the respondents cannot be overlooked as the post was meant for reserved categories and this post was always subject to the approval from the Education Department. There is no dispute that the petitioner belongs to the open category. The petitioner's entitlement to enjoy the post, in the circumstances, would be subject to the non-availability of reserved category candidate or such other candidate. The fact that he was appointed from time to time from the year 1984 upto 1987-1988, by that itself, nowhere gives any right to such candidate to claim permanency, even after expiry of the alleged probation period, in the facts and circumstances of the case.

6. In this background and in view of the submission as raised and as referred in the Written Statement, as well as, recorded by the Tribunal in paragraph 9, I am also of the view that now, at this stage, i.e. after more than 15 years, it is difficult to accept the prayer of reinstatement. The finding given by the Tribunal is also justified to maintain the order to the effect that 'unless the said post becomes de-reserved', a candidate appointed temporarily on such vacancy of ST/SC category would have only status of 'temporary' candidate.

7. A candidate from the open category cannot claim a right of permanency, on the said reserved post. There is nothing pointed out that such post becomes de-reserved automatically after lapse of time or any other such things. In the circumstances, appellant being open category candidate would have no right to hold the post meant for reserved category candidate. The 'quota' or any action based on the Reservation Policy cannot be disturbed without following the due procedure of law.

8. It needs to be mentioned here that if candidates belonging to the SC/ST category are not available, the petitioner's case may be considered by the Management, if there is still a vacancy and/or the post is still required to be filled in. However, the Management is at liberty to consider this aspect, if a case is

made out on merit.

9. In view of this observation, I decline to interfere with the finding recorded by the Presiding Officer, School Tribunal, dated 27th October, 1989, hence termination is upheld.

10. The Writ Petition is accordingly disposed of. No order as to costs.

Certified copy expedited.

[ANOOP V. MOHTA, J.]